

DOCKET NO: UWY-CV-18-6046436-S :	:	SUPERIOR COURT
ERICA LAFFERTY, ET AL.,	:	COMPLEX LITIGATION DOCKET
VS.	:	AT WATERBURY
ALEX EMRIC JONES, ET AL.	:	OCTOBER 7, 2021

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DEFENDANTS' OPPOSITION TO MOTION
FOR SANCTIONS REGARDING TRIAL BALANCES

Defendants Alex Jones, Free Speech Systems, LLC, Infowars, LLC, Infowars Health, LLC, and Prison Planet TV, LLC, object to the misnamed Plaintiffs' Motion for Sanctions re Manufactured [sic] Trial Balances (*Lafferty* Entry No. 457.00). Plaintiffs asked for the trial balances; they received a set of CPA-audited trial balances for Free Speech Systems, LLC, the only defendant that kept the financial information necessary to generate trial balances.¹ Now, Plaintiffs are moving for sanctions because they were given correct information. If this motion is allowed, it will demonstrate to the world that the fix is in—that there cannot be justice in this Court if your name is Alex Jones.

¹ Plaintiffs' motion is improperly directed to the "Jones defendants". Though Plaintiffs insist on lumping Mr. Jones and his companies together, their illogic would mean that Plaintiff Donna Soto would somehow be subject to sanctions if one of her three children, who are also plaintiffs, committed error. They have no basis to do so.

The standard the Court must use is that the order allegedly not complied with “must be reasonably clear...the record must establish that the order was in fact violated...[and] the sanction imposed must be proportional to the violation.” *Lafferty v. Jones*, 336 Conn. 332, 374 (2020). Plaintiffs do not meet this standard. “Trial court judges face great difficulties in controlling discovery procedures which all too often are abused by one side or the other[.]” *Mulrooney v. Wambolt*, 215 Conn. 211, 223, 575 A.2d 996 (1990). Sanctioning a party because they gave you correct information can only be described as litigation abuse.

1.0 The Order was Not Violated

The order at issue is the Order of May 6, 2021, which states, in relevant part, that “[t]he records requested in the request to produce [to Melinda Flores] are ordered to be produced by the close of business on 5/14/21.” Plaintiffs requested trial balances for certain years. Free Speech Systems produced those trial balances.

Plaintiffs claim they were provided “manufactured” trial balances and were not provided the “actual” trial balances. This is a nonsense argument and a court with any sense of justice and fairness could never countenance. If Defendants were entitled to justice, they would be awarded their costs just for having to respond.

As Defendants previously set forth, Free Speech Systems retained the services of a Certified Public Accountant (“CPA”), Robert Roe, to help collect the information responsive to the subpoena. Mr. Roe is an experienced CPA with over 50 years of experience. See Exhibit A, Affidavit of Robert Roe, at ¶ 2.

Mr. Roe was asked to provide the information requested in the two requests in the subpoena to Ms. Flores seeking financial information: 1) “Trial balances for FSS for each date. . . (December 31 for the years 2012-2019)” and 2) “Any and all subsidiary ledgers for each account listed in the Trial balances produced in response to Request No. 6 above.” As Mr. Roe explains in his affidavit, he obtained trial balance and general ledger information from Ms. Flores. Specifically, Mr. Roe:

- a. Requested an excel file with the trial balances for each year from QuickBooks.

b. In the excel file, combined certain accounts to provide an accurate presentation of Free Speech Systems's financial situation. For example, in some years Free Speech Systems used bank accounts where all funds were swept into a concentration account for cash management and bill payment purposes. As a result, some of the general ledger cash accounts showed large positive balances while another showed significant negative balances. When combined the general ledger accounts showed the correct balance, but when presented separately, they were misleading.

c. After completing accurate trial balances, Mr. Roe provided PDF versions of them to Free Speech Systems for production in this litigation.

Roe Affidavit at ¶ 7. Whereupon, Free Speech Systems produced these Trial Balances, in reliance on its expert CPA, Mr. Roe, as ordered by the Court.

Plaintiffs present no evidence that accurate trial balances were not produced. Instead, they are pretending to be upset because they were not given misleading, inaccurate trial balances generated from the raw, faulty, mistaken QuickBooks data. A QuickBooks report is only as good and useful as what the user keys in. "The phrase garbage in — garbage out, or GIGO, is the postulate that no matter how sophisticated and capable an information processor is, the quality of that information it generates cannot be superior to the quality of the information it received. In other words, an expert working on inaccurate data will only yield misleading results." *SLSJ, LLC v. Kleban*, 277 F. Supp. 3d 258, 291 n. 21 (D. Conn. 2017) (quoting expert report). If Ms. Flores or another person at Free Speech Systems hits too many zeros or neglects to record transactions due to oversight, then the so-called "trial balance" for the company produced by QuickBooks will not be the accurate trial balance for the company.

Ms. Flores testified that she did an export of data and gave it to Mr. Roe. What did Plaintiffs expect? The natural consequence of giving bookkeeping data to an accountant is to make sure that the accountant does their job and audits it. Ms. Flores provided QuickBooks data to Mr. Roe, who identified errors, and made accounting adjustments. That Ms. Flores was unable to recognize the adjustments at her deposition is the sole fault of Ms. Flores, a mere bookkeeper. That Ms. Flores was not aware of how Mr. Roe corrected the flawed information she provided is

not Defendants' fault. She mistakenly believed that the produced trial balances were the same "garbage out" she had given Mr. Roe.

Defendants did nothing sanctionable. They produced the documents they were ordered to produce. They produced a witness who testified, but she was not testifying as a formal corporate representative and her answers are not attributable to any defendant. Plaintiffs seem to imply that Defendants' counsel should have corrected her answers mid-deposition, but there is no deposition procedure for doing so and Plaintiffs were informed of her mistake within a reasonable time thereafter.

2.0 The Order was Not Reasonably Clear

If the Court intended to order that the garbage-out, faulty, inaccurate, and not-actual trial balances have been produced, then this is news to Defendants. If so, Defendants did not "in fact understood the trial court's intended meaning." *Millbrook Owners Ass'n v. Hamilton Standard*, 257 Conn. 1, 17, 776 A.2d 1115, 1126 (2001).

QuickBooks was released in 1983. Trial balances existed long before QuickBooks. QuickBooks is not the end-all-and-be-all of accounting. Accountants generated trial balances based upon the various bookkeeping data sources, and they still do. If the Court had allowed the same request in 1982, no one could have gone to QuickBooks—it would be expected that an accountant would create it. If a bookkeeper had messed up data in 1982, one would expect that the accountant preparing the trial balance would notice the error and prepare an accurate trial balance. That is what was done here. The Order cannot be deemed reasonably clear if it meant something different merely because bookkeeping was done through QuickBooks rather than on paper.

3.0 Plaintiffs Request a Disproportionate Sanction

Sanctions are not justified. Any sanction imposed against Free Speech System would not be proportional to the violation because there was no violation nor was the order reasonably clear. Neither should any sanction issue against any other defendant as the order was not directed to them and they had no ability to comply. Moreover, there was zero prejudice to Plaintiffs, who received

accurate, rather than flawed information—to the contrary, they would have been prejudiced if they were given the thing they complain about.

The sanctions requested are wholly disproportionate. The extreme sanction of default is not warranted, but it is not unexpected that the Plaintiffs would seek it. A dispositive sanction is a sanction of last resort. *See Ridgaway v. Mount Vernon Fire Ins. Co.*, 328 Conn. 60, 71-73, 176 A.3d 1167, 1174-75 (2018). It must be “the only reasonable remedy available to vindicate the legitimate interests of the other party and the court.” (Citation omitted; internal quotation marks omitted.) *D’Ascanio v. Toyota Industries Corp.*, 309 Conn. 663, 670-72, 72 A.3d 1019 (2013). It is not a reasonable remedy.

Of course, it is plain that these cumulative sanctions motions are manufactured to avoid having the Court address liability. Plaintiffs have avoided adjudication of their claims on the merits for over three years through manipulation of diversity jurisdiction and procedural gamesmanship. Now that they are faced with an impending decision on the motion to strike, they are ramping up their claims for sanctions in order to bias the Court in their favor. Putative sanction after putative sanction is sought in order to insulate them cumulatively from reversal on appeal.

The Court should not play along with Plaintiffs’ gamesmanship. If the Court thinks (albeit erroneously) that a dispositive sanction is warranted, it should go ahead and issue it, rather than delaying the inevitable. A SLAPP suit, such as this one, is a case where the process *is* the punishment. Plaintiffs cannot be permitted to abuse the administration of justice, forcing Defendants to expend significant sums in responding to discovery requests and risible motions if they are staring down the barrel of a default anyhow. The Court cannot be part of the prosecution, using the process to punish Defendants because Mr. Jones had the audacity to exercise his First Amendment right to question perhaps the most sorrowful official narrative in U.S. history.

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The Court should deny the motion.

Dated: October 7, 2021

Respectfully submitted,
ALEX EMRIC JONES, INFOWARS, LLC,
FREE SPEECH SYSTEMS, LLC,
INFOWARS HEALTH, LLC, PRISON
PLANET TV, LLC

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CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered on this 7th day of October, 2021 to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served including:

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Exhibit A

Affidavit of Robert Roe

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AFFIDAVIT OF ROBERT ROE

I, **Robert Roe**, hereby depose and state that:

1. I am 73 years old and live in Lakeway, Texas.
2. I am a Certified Public Accountant and Certified Forensic Accountant. I hold a BBA from the University of Wisconsin-Whitewater and a Master of Science in Taxation from Golden Gate University in San Francisco. I also hold the designations as Certified in Financial Forensics (CFF) and Chartered Global Management Accountant (CGMA) from the American Institute of Certified Public Accountants. I have been continuously involved in accounting for 51 years.
3. In April 2021, I was engaged by Free Speech Systems, LLC (FSS) to assist in the analysis of financial information for use in this in litigation.
4. In this engagement I worked with Melinda Flores, the company's bookkeeper.

5. I reviewed a Notice of Deposition dated in April 2021 requesting certain financial information from FSS. I then advised FSS as to what documents would be responsive to the document requests.
6. The two document requests relating to financial information were as follows:
 - a. Trial balances of FSS for each date listed (below):
 - i. December 31, 2012
 - ii. December 31, 2013
 - iii. December 31, 2014
 - iv. December 31, 2015
 - v. December 31, 2016
 - vi. December 31, 2017
 - vii. December 31, 2018
 - viii. December 31, 2019
 - b. "Any and all subsidiary ledgers for each account listed in the Trial balances produced in response to (the request above)"
7. Based on the list of requested documents, I did the following:
 - a. Requested an excel file with the trial balances for each year from QuickBooks.
 - b. In the excel file I combined certain accounts to provide an accurate presentation of FSS's financial situation. For example, in some years FSS used bank accounts where all funds were swept into a concentration account for cash management and bill payment purposes. As a result, some of the general ledger cash accounts showed large positive balances while another showed significant negative balances. When combined the general ledger accounts showed the correct balance but when presented separately, they were misleading.
 - c. After completing accurate trial balances, I provided PDF versions of them to FSS for production in this litigation.

8. Later I learned that in preparing the trial balances I made a few formatting errors. As a result of the formatting errors, in a few years some account balances were not printed but excel still included them in the totals so that my error was not immediately apparent. Upon learning of these errors, I prepared corrected trial balances and I have provided them to FSS.
9. The document request requested subsidiary ledgers for each account listed in the Trial balances. Plaintiffs appear to conflate the terms subsidiary ledger and subledger.
 - a. Subsidiary ledger is a term of art that has a specific meaning in accounting. According to the American Institute of Certified Public Accountants, a subsidiary ledger stores the details for a general ledger control account. Once information has been recorded in a subsidiary ledger, it is periodically summarized and posted to a control account in the general ledger, which in turn is used to construct the financial statements of a company. Most accounts in the general ledger are not control accounts; instead, individual transactions are recorded directly into them. Subsidiary ledgers are commonly maintained for accounts receivable, accounts payable, and fixed assets.
 - b. A subledger is not a defined accounting term and informally refers to a schedule of details included in general ledger accounts.
10. FSS does not maintain or utilize subsidiary ledgers.

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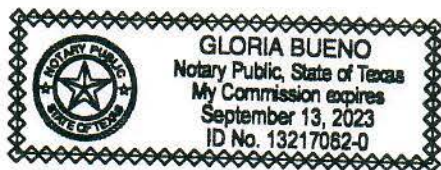
11. While the document request specifically requested subsidiary ledgers, it appears from plaintiffs' motion that the request was intended to be for supporting detail of transactions in the general ledger. While it is possible to generate general ledger detail from QuickBooks, such a report for FSS would likely be thousands of pages per year containing hundreds of thousands and perhaps millions of entries in total.

THE AFFIANT



ROBERT ROE

Subscribed and sworn before me this 26th day of July, 2021.



Name: Gloria Bueno

Notary Public / Commissioner of Court

My Commission Expires: 9/13/2023